

**CITY OF HOLLISTER
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT, made and entered into this ____ day of _____, 2008, by and between the City of Hollister, California, a municipal corporation, ("City,") and ("Contractor").

1. Description of Project: City desires to actively pursue grant funding to assist in the operation of the City, and in the improvement of the community ("the Project"), and to engage Contractor to provide the required professional services relating to the project.

2. Scope of Services - Basic; Completion: Contractor shall perform those basic services in connection with the project as are set forth more particularly in EXHIBIT "A" entitled "SCOPE OF CONTRACTOR SERVICES - BASIC, COMPLETION SCHEDULE" and shall complete said services in accordance with the completion schedule for them incorporated in said Exhibit.

3. Scope of Services - Additional, Completion Schedule: It is understood by City and Contractor that it may be necessary, in connection with the project, for Contractor to perform or secure the performance of services other than those set forth in EXHIBIT "A". In each such instance, Contractor shall advise the City, in advance and in writing, of the need for such additional services, their cost and the estimated time required to perform them (if applicable). Contractor shall not proceed to perform any such required additional services until City has determined that such service is beyond the scope of the basic services to be provided, is required, and has given written authorization to perform or obtain it. Each additional service so authorized shall constitute an amendment to this Agreement, shall be identified and sequentially numbered as "Additional Contractor Service No. 1" and so forth, shall be subject to all of the provisions of this Agreement, and shall be attached as EXHIBIT "D" entitled "SCOPE OF CONTRACTOR SERVICES - ADDITIONAL; COMPLETION SCHEDULE."

4. Changes to Scope of Work - Basic Services: City may at any time and, upon a minimum of ten (10) days' written notice, modify the scope of basic services to be provided under this Agreement. Contractor shall, upon receipt of said notice, determine the impact on both time and compensation of such change in scope and notify City in writing. Upon agreement between City and Contractor as to the extent of said impacts to time and compensation, an amendment to this Agreement shall be prepared describing such changes. Execution of the amendment by City and Contractor shall constitute the Contractor's notice to proceed with the changed scope.

5. Compensation; Retention: Contractor shall be compensated for services rendered to City pursuant to this Agreement periodically in the amounts, manner and in accordance with the payment schedule as set forth in EXHIBIT "B" entitled "COMPENSATION." Amounts due to Contractor from City for services rendered shall be evidenced by the submission to City by

Contractor of an invoice, prepared in a form satisfactory to City, setting forth the amount of compensation due for the period covered.

Each such invoice shall be forwarded to City so as to reach it on or before the fifteenth (15th) day of the month next following the month, or other applicable period, for which the services invoiced were provided. All such invoices shall be in full accordance with any and all applicable provisions of this Agreement. City will make payment on each such invoice within thirty (30) days of its receipt, provided however that if Contractor submits an invoice which is incorrect, incomplete, or not in accordance with the provisions of this Agreement, then City shall not be obligated to process any payment to Contractor until a correct and complying invoice has been submitted.

6. Responsibility of Contractor: By executing this Agreement, Contractor warrants to City that Contractor possesses, or will arrange to secure from others, all of the necessary professional capabilities, experience, resources and facilities necessary to provide to City the services contemplated under this Agreement. Contractor further warrants that it will follow the best current, generally accepted professional practices to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding the project for which services are rendered under this Agreement.

7. Responsibility of City: To the extent appropriate to this project, City agrees to:

7.1 Assist Contractor by placing at its disposal all available information pertinent to the project, including previous reports and any other relevant data.

7.2 Guarantee access to and make all provision for Contractor to enter upon public and private property as required for Contractor to perform its services.

7.3 Examine all studies, reports, specifications, proposals and other documents prepared and presented by Contractor, and render verbally or in writing as may be appropriate, decisions pertaining thereto within a reasonable time so as not to delay the progress of the work by Contractor.

7.4 Designate in writing a person to act as City's representative with respect to work to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to materials, equipment, elements and systems pertinent to Contractor's services.

8. Indemnification: Contractor shall indemnify, defend with counsel approved by City, and hold harmless City, its officers, officials, employees and agents from and against any and all liability, loss, damage, expense, and cost (including without limitation attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Contractor's negligence, recklessness, or willful misconduct of Contractor hereunder or its failure to comply with any of its obligations contained in this Agreement.

9. Insurance: During the term of this Agreement, Contractor shall maintain in full force and effect at its own cost and expense the following insurance coverage: (Check which applicable.)

9.1 Workers' Compensation Insurance to cover its employees, and Contractor shall require all contractors and subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of the subcontractors' employees.

9.2 Professional Liability Insurance Covering Errors and Omissions. The limits of coverage shall be no less than ONE MILLION DOLLARS (\$1,000,000) with a provision for no more than \$25,000 deductible. Contractor may not disclaim responsibility or avoid liability for the acts or omissions of its subcontractors or other professional contractors.

9.3 Public Liability Insurance including personal injury and property damage insurance for all activities of the Contractor and its subcontractors arising out of or in connection with this Agreement, written on a comprehensive general liability form including, but not limited to, Broad Form Property Damage, blanket contractual, products liability and completed operations, X, C, U hazards, vehicle coverage and non-owned auto liability coverage in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit personal injury and property damage for each occurrence.

9.4 Certificates of Insurance and properly executed endorsements in a form acceptable to the City Attorney evidencing the coverage required by the clauses set forth above shall be filed with the City at the time of execution of this Agreement. Each such policy shall be endorsed with the following language, except as otherwise provided:

(1) The City of Hollister is named as additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents, and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly or indirectly, in the performance of the contract.

(For Public Liability Only)

(2) The insurance provided is primary and no other insurance held or owned by the City shall be called upon to contribute to a loss.

(3) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured.

(4) The coverage provided by this policy shall not be canceled, non-renewed, or substantially reduced in amount or scope, without thirty (30) days prior written notice given to City

by certified mail.

(5) All rights of subrogation are hereby waived against the City, its officers, and employees when acting within the scope of their appointment or employment.

10. Confidentiality: All City information disclosed to Contractor during the course of performance of services under this Agreement shall be treated as confidential and shall not be disclosed to any other persons or parties except as authorized by City, or required by law.

11. Conflict of Interest: Contractor warrants that neither Contractor, nor any of its employees, agents or subcontractors, have a conflict of interest with respect to the work to be performed under this Agreement, nor shall such individuals, during this term of this Agreement, acquire any interest which would conflict in any manner with the performances of services hereunder.

12. Nondiscrimination: During the performance of this Agreement, Contractor will not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, sex, sexual orientation, or age. Contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, creed, color, national origin, sex, sexual orientation, or age.

13. Independent Contractor: City and Contractor agree that the relationship between them created by this Agreement is that of an employer-independent contractor. Contractor shall be solely responsible for the conduct and control of the work performed under this Agreement. Contractor shall be free to render professional consulting services to others during the term of this Agreement, so long as such activities do not interfere with or diminish Contractor's ability to fulfill the obligations established herein to City.

14. Notice to Proceed; Progress; Completion: Upon execution of this Agreement by the parties, City shall give Contractor written notice to proceed with the work. Such notice may authorize Contractor to render all of the services contemplated herein, or such portions or phases as may be

mutually agreed upon. In the latter event, City shall, in its sole discretion, issue subsequent notices from time to time regarding further portions or phases of the work. Upon receipt of such notices, Contractor shall diligently proceed with the work authorized and complete it within the agreed time period.

15. Ownership of Documents. Title to all documents, drawings, specifications, and the like with respect to work performed under this Agreement shall vest with City at such time as City has compensated Contractor, as provided herein, for the services rendered by Contractor in connection with which they were prepared.

16. Designation of Key Personnel: The individuals specified in the attached EXHIBIT "C" shall provide the services set forth herein, and shall be the persons primarily in charge of such work. Prior to the provision of work by any other individuals on this project, such other individuals shall first be approved in writing by the city manager.

17. Mistake of Fact. Each party understands that if any fact with respect to any matter covered by this Agreement is found hereafter to be other or different from the facts now believed by that party to be true, such party expressly accepts and assumes the risk of such possible differences in fact and agrees that this Agreement shall be in all respects effective and not subject to termination or rescission by reason of any such difference in facts.

18. Term; Termination: The term of this Agreement shall commence upon City's issuance to Contractor of a notice to proceed for all or a portion of the work, as hereinabove provided, and shall terminate upon City's acceptance and payment for all or such portion of the work as was authorized by such notice, including any and all retention. Notwithstanding the foregoing, City may, in its sole discretion, terminate this Agreement at any time and for any reason whatsoever by giving at least ten (10) days prior written notice of such termination to Contractor. In this latter event, Contractor shall be entitled to compensation for all services rendered and work performed for City to the date of such termination.

19. Access to Records. Contractor shall maintain all books, records, documents, accounting ledgers, and similar materials relating to work performed for City under this Agreement on file for at least five (5) years following the date of final payment to Contractor by City. Any duly authorized representative(s) of City shall have access to such records for the purpose of inspection, audit and copying at reasonable times, during Contractor's usual and customary business hours. Contractor shall provide proper facilities to City's representative(s) for access and inspection.

20. Assignment. This Agreement is binding on the heirs, successors, and assigns of the parties hereto and shall not be assigned by either City or Contractor without the prior written consent of the other. Any attempt by Contractor to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

21. Compliance with Laws, Rules, Regulations. All services performed by Contractor pursuant to this Agreement shall be performed in full compliance with all applicable federal, state, and City laws, including any rules, standards or regulations promulgated thereunder.

22. Exhibits Incorporated. All Exhibits referred to in this Agreement and attached to it are hereby incorporated in it by this reference.

23. Integration; Amendment. This Agreement represents the entire understanding of City and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in it. This Agreement may not be modified or altered except by amendment in writing sign by both parties.

24. Severability. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall continue to be in full force and effect.

25. Waiver/Validity. Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver of any other condition of performance under this Agreement. The acceptance by the City of the performance of any work or services by Contractor shall not be deemed to be a waiver of any term or condition of this Agreement.

26. Jurisdiction: City and Contractor agree that the law governing this Agreement shall be that of the State of California. Any suit brought by either party against the other arising out of the performance of this Agreement shall be filed and maintained in the County of San Benito.

27. Notice: Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service, addressed to the parties as follows:

a. To City:

City Manager
City of Hollister
375 Fifth Street

Hollister, California 95023

b. **To Contractor:**

Nothing hereinabove shall prevent either City or Contractor from personally delivering any such notices to the other.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year above written.

CONTRACTOR:

CITY OF HOLLISTER:

, Mayor

APPROVED AS TO FORM:

Stephanie Atigh, City Attorney

EXHIBIT "A"

SCOPE OF SERVICES - BASIC, COMPLETION SCHEDULE

SCOPE OF SERVICES

Contractor shall provide the following services:

- 1.
- 2.
- 3.

COMPLETION SCHEDULE

EXHIBIT "B"

COMPENSATION

City shall pay Contractor a maximum total amount of \$_____ comprised of the following:

1. Task \$_____

2. Task \$_____

Total

\$(This amount must match
amount above)

[OPTIONS]

ADDITIONAL COSTS FOR TRAVEL AND PER DIEM

EXHIBIT "C"

PROJECT STAFF

NAME

TITLE

HOURLY RATE

[OPTION:]

(Professional qualifications are attached hereto as Appendix A. Only firm principals will be involved in the project.)

EXHIBIT "D"

SCOPE OF CONTRACTOR SERVICES - ADDITIONAL; COMPLETION SCHEDULE

No special provisions initially identified.